

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS

No. 6:21-cv-00151

James Neal,
Plaintiff,

v.

Malakoff Independent School District,
Defendant.

ORDER


Plaintiff, James Neal, initiated this action against defendant Malakoff Independent School District (“MISD”), alleging claims of race discrimination pursuant to the Civil Rights Act of 1964, 42 U.S.C. § 2000e-(2)(a) (“Title VII”) as well as violations of the Texas Commission on Human Rights Act, codified in Chapter 21 of the Texas Labor Code § 21.001 *et seq.* (“TCHRA”), and a First Amendment claim brought pursuant to 42 U.S.C. § 1983. Doc. 27. On June 29, 2021, defendant MISD brought a motion to dismiss all asserted claims pursuant to Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6). Doc. 30.

On August 4, 2021, Judge Love issued a report and recommendation, recommending that defendant’s motion be converted to a motion for summary judgment and that the motion be granted as to plaintiff’s claims brought pursuant to the Texas Labor Code and 42 U.S.C. § 1983. Doc. 35. Judge Love recommended that these claims be dismissed without prejudice. *Id.* Judge Love further recommended that the motion be denied as to plaintiff’s 2017–2018 Title VII race discrimination claim. *Id.* No objections were filed to the magistrate judge’s report. MISD has now filed an answer to plaintiff’s amended complaint. Doc. 36.

When there have been no timely objections to a magistrate judge’s report and recommendation, the court reviews it only for clear error. *See Douglass v. United Servs. Auto. Ass’n*, 79 F.3d 1415, 1420 (5th Cir. 1996). Having reviewed the magistrate judge’s report,

and being satisfied that it contains no clear error, the court accepts its findings and recommendation. The court construes defendant's motion to dismiss plaintiff's second amended complaint (Doc. 30) as a motion for summary judgment. Defendant's motion (Doc. 30) is granted as to plaintiff's claims brought pursuant to the Texas Labor Code and 42 U.S.C. § 1983 and those claims are dismissed without prejudice. Defendant's motion (Doc. 30) is denied as to plaintiff's 2017–2018 Title VII race discrimination claim, which shall be the sole proceeding claim in this case.

So ordered by the court on August 26, 2021.

A handwritten signature in black ink, appearing to read "J. Campbell Barker", is written over a horizontal line.

J. CAMPBELL BARKER
United States District Judge